



INTERIOR BOARD OF INDIAN APPEALS

Estate of Abbie (Effie) Little Eagle Osborne

22 IBIA 142 (06/18/1992)

Judicial review of this case:

Affirmed, *Osborne v. Lujan*, Civ. No. 92-C-1119-E (N.D. Okla. Apr. 15, 1994)

Affirmed, No. 94-5134 (10th Cir. Aug. 1, 1995)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ABBIE (EFFIE) LITTLE EAGLE OSBORNE

IBIA 91-112

Decided June 18, 1992

Appeal from an order on rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate IP OK 58 P 90.

Affirmed.

1. Indian Probate: Children, Illegitimate: Right to Inherit: Generally

Under 25 U.S.C. § 371 (1988), an illegitimate Indian child is entitled to inherit trust property through the person shown to be the father.

APPEARANCES: William B. Cummings, Esq., Alexandria, Virginia, for appellants; Patricia Ann Eaves, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Ramona Little Eagle Osborne, Mattie Osborne Fish, Carol Louise Nuttle, William Frank Nuttle, and Lamont Osborne seek review of a May 31, 1991, order on rehearing issued by Administrative Law Judge Sam E. Taylor in the estate of Abbie (Effie) Little Eagle Osborne (decendent). For the reasons discussed below, the Board affirms that order.

Background

Decendent, unallotted Pawnee 812U004336, was born on September 4, 1904, and died intestate on January 30, 1989, in Pawnee, Oklahoma. Judge Taylor held hearings to probate her trust estate on March 29 and April 2, 1990. The family history sheet prepared by the Bureau of Indian Affairs (BIA) showed that decendent's prospective heirs were 3 daughters, 12 children of deceased children, and 2 children of a deceased grandson. Patricia Ann Eaves was listed as the child of decendent's pre-deceased son, Roland G. Osborne.

At the hearings, Ramona Osborne challenged Patricia's paternity. Accordingly, testimony was taken concerning the matter. The testimony

^{1/} Ramona Osborne and Mattie Fish are decendent's daughters. Carol Nuttle, William Nuttle, and Lamont Osborne are decendent's grandchildren.

established that Roland had a relationship with Patricia's mother, Maxine Eaves, before Patricia was born and that he died as the result of a car accident which occurred shortly before the birth. It showed further that decedent and other family members had consistently accepted Patricia as Roland's daughter and included her in family events.

The evidence included a notarized statement signed by decedent on July 30, 1986, which read:

I, Effie Osborne, believe that Patricia Ann Eaves is the daughter of my deceased son, Roland Grant Osborne, and Maxine Verona (Wichita) Eaves. She was born May 1, 1954, in Pawnee, Oklahoma. At that time my son Roland was injured in an accident and unable to sign her birth certificate.

I would appreciate it if you (The Pawnee Tribal Business Council) would acknowledge this statement in regards to my Granddaughter. [2/]

Also introduced into evidence were documents from the summary probate proceeding in the estate of decedent's pre-deceased husband, Samuel Osborne. 3/ These included a notarized statement signed by decedent on April 5, 1978, which did not show Patricia as a child of Roland. 4/

One witness at decedent's hearing testified that, prior to Patricia's birth, Roland had denied paternity. However, her testimony was contradicted by that of Minnie Fields, decedent's daughter and Roland's sister, who testified that Roland had acknowledged paternity and was excited about the expected baby.

In an order determining heirs issued on January 17, 1991, Judge Taylor found that Patricia was the child of Roland and included her as an heir of decedent.

2/ Patricia used this statement to have her son enrolled in the Pawnee Tribe.

3/ Under 43 CFR 4.271, a summary proceeding may be conducted by a BIA Superintendent when an Indian dies intestate leaving only trust personal property or cash of a value of less than \$1,000.

4/ The form on which the statement was made, however, did not include a question calling for information about illegitimate children. The only question concerning children of deceased children asked for information in cases where "any of the children listed above died before the deceased and was married leaving a surviving spouse and/or children." Thus, decedent might well have concluded that Patricia could not be included on the form because Roland was not married to Patricia's mother.

For this reason, the fact that decedent did not list Patricia on the form is not persuasive evidence that she did not believe Patricia was Roland's child.

Ramona Osborne and Mattie Fish sought rehearing. They challenged the Judge's finding concerning Patricia and also contended that his order distributed incorrect shares to the 2 children of decedent's deceased grandson.

On rehearing, Judge Taylor agreed with the petitioners that the distribution to the children of decedent's deceased grandson was incorrect. However, he reaffirmed his prior finding with respect to Patricia.

Appellants' appeal from Judge Taylor's order on rehearing was received by the Board on July 29, 1991. Appellants and appellee filed briefs.

Discussion and Conclusions

On appeal, appellants contend that Judge Taylor erred in construing their challenge as a challenge to Patricia's paternity. They state: "[A]ppellants have not made any specific claim that [Patricia] is not [Roland's] child, [but] they have repeatedly made the claim that [Patricia] has not proved that she is legally an heir of the decedent herein, which proof is quite different than the proof necessary to show that she may be [Roland's] child" (Appellants' Brief at 4). Appellants also contend that Judge Taylor improperly placed the burden on them to show that Patricia was not the child of Roland.

Appellants contend that the evidence presented at the hearings did not establish that Patricia was decedent's heir under 25 U.S.C. § 371 (1988). Section 371 provides:

For the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of section 348 of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child.

Appellants contend that, under this provision, it was necessary to show that Roland and Maxim Eaves had "cohabited together as husband and wife according to the custom and manner of Indian life," in order for Patricia to be decedent's heir. This argument disregards the second part of section 371, which provides that "every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child."

[1] In the Estate of Woody Albert, 14 IBIA 223, 226 (1986), the Board stated:

The Board has interpreted section 371 on numerous occasions. The consistent interpretation has been that the section allows inheritance under two circumstances: (1) when a child is born

from an Indian custom marriage, and (2) when the child is illegitimate, but the identity of the father can be proven. See, e.g., Estate of Benjamin Kent, Sr. (Ben Nawanoway), 13 IBIA 21 (1984); Ruff v. Portland Area Director, 11 IBIA 267 (1983), petition dismissed, Ruff v. Watt, Civ. No. 83-1329 (D. Or. Mar. 6, 1984), aff'd sub nom. Ruff v. Hodel, 770 F.2d 839 (9th Cir. 1985); Estate of Willis Attocknie, 9 IBIA 249, 89 I.D. 193 (1982).

It is clear that Judge Taylor made his finding under the second criterion, rather than the first. For this purpose, there was no need to prove that an Indian custom marriage existed.

Appellants make no arguments concerning Judge Taylor's finding of paternity and, in fact, suggest that they do not challenge that finding. The Board's review of the record convinces it that the Judge's finding that Patricia is the child of Roland is supported by the evidence and should not be disturbed.

Appellants argue that Judge Taylor incorrectly placed the burden on those challenging Patricia's paternity to prove that she was not Roland's child. The Judge so assigned the burden because the BIA family history sheet showed Patricia as the child of Roland. 5/ The Board finds it unnecessary to decide whether the burden was correctly assigned because it finds that the evidence of Patricia's paternity was sufficient to meet the burden of proof had that burden been assigned to her.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Taylor's order on rehearing is affirmed.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

5/ In an affidavit filed with the Board, appellant Ramona Osborne states that it was she who furnished BIA with the information that Patricia was the child of Roland. She states that she later concluded that she had erred.